IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.651 OF 2002

1. Bharat Sanchar Nigam Ltd.
through its Chief General Manager
Maharashtra Telecome Circle
Fountain Telecom Building NO.2
8th floor, Mumbai-400 001

2. Chief General Manager, BSNL
Maharashtra Telecom Circle,
Fountain Telecom Building No.II
8th floor, Mumbai - 400 001

3. The Chief Superintendent
Central Telegraph Office, Mumbai-1 ... Petitioners

V/s.

1. Shri C.G. Arekar
2. Shri M.S. Hegde
3. Shri C.M. Kulkarni
4. Shri R.A. Hattiholli
5. Shri B.D. Acharya
6. Shri V.M. Kulkarni
7. Shri V.V. Apte
8. Shri A.B. Puranik
9. Shri C.D. Benadikar
10. Shri V.D. Gawde
11. Shri M.L. Lopes
12. Shri M.A. Karogal
13. Shri M.K. Ahuja
14. Smt.J.S. Kanade
15. Shri A.S. Warang
16. Shri A.H. Gite
17. Shri M.V. Gaiwad
18. Shri K.B. Bharucha
19. Shri N.G. Dawani
20. Shri N.H. Suryavanshi
21. Shri A.L. Naik
22. Shri A.P. Mangalvede
23. Shri R.D. Kotwal
24. Shri D.G. Bandgar
25. Smt.S.A. Tilak
26. Shri V.K. Mhatre
27. Shri R.J. Iroy
28. Smt.M.A. Puranik
29. Shri P.G. Kapse
30. Shri B.A. Parab
31. Shri L.B. Patil
32. Shri S.S. Purohit
33. Smt. L.V. Kulkarni

34. Shri R.D. Shinde
35. Shri C.K. Sawant
36. Shri D.K. Borhade
37. Smt.A.S. Naik
38. Shri S.H. Shirangi
39. Shri S.R. Sawant
40. Smt.K.P. Dravida
41. Shri D.S. Ghadi
42. Kum.N.D. Hotwani
43. shri V.S. Sakpal
44. Smt.S. Radha
45. Shri R.S. Parab
46. Shri L.G. Narkar
47. Shri P.A. mahapnkar
48. Shri H.S. Ranadive
49. Shri G.D. Punwatkar
50. Smt.P.R. Issac
(All of whom are working in the cadre of Telegraphist at Central Telegraph Office, Fort Mumbai - 400 001)

51. Shri M.P. Nandanwar
52. Shri M.P. Pnadam
53. Shri R.S. Mandavi
54. Shri V.K. Rarvikar
(Respondent Nos.51 to 54 are working as Chief Telegraph Master in the office of the Chief Superintendent Fort, Mumbai-400 001) ... Respondents

Mrs.N.V. Masurkar a/w Mr.Vinay S. Masurkar for Petitioners

Mr.G.K. Masand for Respondent Nos.1 to 50

CORAM: **H.L. GOKHALE & SMT.NISHITA MHATRE, JJ.**

JUDGEMENT RESERVED ON: **SEPTEMBER 20, 2004**
JUDGEMENT DELIVERED ON: **OCTOBER 1, 2004**

JUDGMENT (PER NISHITA MHATRE, J.):

. This Writ Petition challenges the order of the Central Administrative Tribunal by which the Tribunal has granted the reliefs claimed by the Respondent Nos.1 to 50 to the present Writ Petition. The Tribunal while deciding the Original Application has granted the

respondent Nos.1 to 50, besides other reliefs, notional promotion with retrospective effect to grade IV of the Biennial Cadre Review scheme from the time their immediate junior was given such promotion. It is this part of the judgement of the Tribunal which is being impugned in the present writ petition.

2. Two questions which arise for our determination are: 1) whether the Central Administrative Tribunal had jurisdiction to decide the Original Application when it passed the order on 5.11.2001, granting reliefs to the respondent-employees who were employed with the erstwhile Department of Telecommunications (for short, 'DOT'), Government of India which was incorporated as a Government company known as Bharat Sanchar Nigam Limited (for short, 'BSNL') w.e.f. 1.10.2000; (2) Assuming the Tribunal had such jurisdiction, whether on merits the Tribunal was right in awarding notional promotion to Respondent Nos.1 to 50 from the date on which their immediate junior was granted such promotion.

3. A few facts are necessary to be stated. Respondent Nos.1 to 50 as well as Respondent Nos.51 to 54, against whom respondent Nos.1 to 50 have a grievance, were appointed as telegraphists on the basic grade I of Rs.975-1600. They were then promoted to the post of Telegraph Master i.e., Grade II and later as

Senior Telegraph Master i.e., Grade III in the scale of 1600-2660. These promotions were in accordance with the normal channel of promotion. Government of India introduced on 17.12.1983 a One Time Bound Promotion scheme (OTBP scheme) under which telegraphists who had completed 16 yeas of service were entitled to be promoted to the next grade. Respondent Nos.1 to 50 were promoted under this schem. Thereafter, on 16.10.1990, another scheme known as the Biennial Cadre Review scheme (for short, 'BCR scheme') was introduced for promoting those who were regular employees on 1.1.1990 and had completed 26 years in the basic grade (including further promotions).

4. Besides this channel of promotion, the normal channel for providing promotion was by giving the promotees a selection grade. Twenty percent of those in grade I were promoted to grade II depending on the vacancies in grade II. One third of the employees out of these 20% were promoted on the basis of their results in a competitive exam and the rest after being selected by the Departmental Promotion Committee. Respondent Nos.51 to 53 were promoted after the DPC and Respondent No.54 on the basis of the competitive exams. These employees being from the reserved category were given accelerated promotions. They were promoted to the higher grade i.e., Grade II earlier than Respondent

Nos.1 to 50, prior to the introduction of the OTBP scheme. Respondent Nos.1 to 50 as well as Respondent Nos.51 to 54 were then in the same cadre, i.e., Grade II, Respondent Nos.1 to 50 being promoted under the OTBP scheme while Respondent Nos.51 to 54 were promoted via the 20% Selection Grade scheme. Respondent Nos.51 to 54 being promoted to Grade II earlier than Respondent Nos.1 to 50, became senior to them.

5. As stated earlier, under the BCR scheme which was introduced by the Government, promotions to 10% posts in the scale 2000-3200 i.e., Grade IV could be effected by promoting those of employees, who had put in 26 years in the basic grade and were regularised by 1.1.1990; the basic grade included the post of telegraphists and telegraph master. Candidates from the reserved category were entitled to such promotions once if they had completed 17 years of service in the basic grade and were regular employees as on 1.1.1990. Accordingly, Respondent Nos.51 to 54 were promoted under the BCR scheme on 26.10.1990. They were given a further promotion to BCR grade IV, i.e., within the 10% quota; Respondent Nos.51 and 52 being appointed on 27.10.1990 and Respondent Nos.53 and 54 w.e.f. 1.7.1991 and 1.1.1993 respectively.

6. Aggrieved by the action of the government of not

being granted promotions to grade IV Respondent Nos.1 to 50 challenged the same by filing Original Application No.110 of 1997 before the Central Administrative Tribunal on 1.1.1997. They also challenged the promotions granted to Respondent Nos.51 to 54 who had joined service later, to Grade IV in the BCR scheme.

7. It appears prior to this, the accelerated promotions granted by the DOT were challenged before the Principal Bench of the Central Administrative Tribunal at Delhi. By its judgment dated 7.7.1997 in *Santosh Kapoor v/s. Union of India,* the Principal Bench held that the scale of Rs.2000-3200 is part of the BCR scheme and that 10% of the posts in 1600-2660 are placed in Rs.2000-3200. The Tribunal held that the promotion to Rs.2000-3200 should be based on seniority of officers maintained with reference to the basic grade as stated in the clarificatory letter issued by the Department of Telecommunications of 11.3.1997. Accordingly, the Tribunal issued the following directions:

> 8. In the above view of the matter, we direct that the promotion to 10% posts in scale 2000-3200 would have to be based on seniority in basic cadres subject to fulfilment of other conditions in the BCR viz. those who were regular employees as on 1-1-90 and had completed 26 years of service in basic grades (including higher scales). The respondents are directed to consider applicants accordingly from due date with consequential benefits. The employee who may be senior to applicants in the scale of 1600-2660 and who may have already been given

> the scale of Rs.2000-3200 at the cost of those senior in basic grades by any different interpretation of the BCR scheme, may in the discretion of the respondents, instead of being reverted, be considered for promotion to scale of Rs.2000-3200 by suitable adjustment in the number of posts by upgradation as necessary.

8. This judgment was impugned by the Government by filing Civil Appeal No.3201 of 1993 before the Apex Court. The Apex Court confirmed the judgment of the Tribunal and held that completion of 26 years in the basic grade alongwith the fact of being a regular employee of 1.1.1990 are essential requirements for obtaining the benefit under the BCR scheme.

9. It appears that similar challenges were made by various employees before the Bombay Bench of CAT in *P.B. Kulkarni and anr. v/s. Union of India,* **Original Application No.455 of 1994** and the Ahmedabad bench in the case of *K.R. Prajapati & Ors. v/s. Union of India*, **Original Application No.454 of 1997**. By different judgments, both these Benches held that the promotion in the BCR scheme grade IV must be on the basis of the seniority in the basic grade. However, they further held that since this was only a case of upgradation to grade IV, there could be no reservation in respect of these posts in grade IV. The judgments of the Ahmedabad Bench was challenged before the Gujarat High court which has confirmed the judgment. The Government has filed a Special Leave Petition before the

Supreme Court where notice has been issued to the Respondents in that case and contempt proceedings arising out the judgment of the High Court have been stayed. This Court has upheld the judgment of the Bombay Bench of the Central Administrative Tribunal in **Writ Petition No.2945 of 2002** *(P.B. Kulkarni v/s. Union of India & Ors.)* Respondent Nos.1 to 50 claim that they are similarly circumstanced as the employees before this Court in *P.B. Kulkarni's* case (supra) and before Gujarat High Court in *K.R. Prajapati's* case (supra).

10. Before entering on to the merits of the controversy before us, we propose to deal with the question regarding the jurisdiction of the Tribunal to decide the application filed by Respondent Nos.1 to 50 under section 14(2) of the Administrative Tribunals Act, 1985. The Government of India took a policy decision to corporatise the services provided by the DOT, in which the respondents were working, and therefore established the Bharat Sanchar Nigam Ltd. on 1.10.2000. All the employees of the DOT including the Respondents herein became employees of the BSNL, the Petitioners herein. By an office memorandum of 30.9.2000, all staff were intimated and transferred on deputation to BSNL, without deputation allowance w.e.f. 1.10.2000. Accordingly, the services of the respondents were also transferred to BSNL. Each individual employee was issued letters

informing him that his services had been transferred to BSNL w.e.f. from 1.10.2000 by way of permanent absorption. Therefore, on the date when the Original Application was decided on 5.11.2001, Respondent Nos.1 to 54 were no longer employees of the Government but were employees of a Corporation set up by Government of India and incorporated under the Companies Act, 1956.

11. Section 14 of the Administrative Tribunals Act, 1985 delineates the jurisdiction and powers of the Administrative Tribunal. It reads thus:

> 14. Jurisdiction, powers and authority of the Central Administrative Tribunal. - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to -
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> (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
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> all service matters concerning-
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> (i) a member of any All-India Service; or
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> (ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
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> (iii) a civilian not being a member of an All-India Service or a person

referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the union or of any State or of an local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

. Explanation.- For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (30 to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

. Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall

> also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to -
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> > (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and
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> > (b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

12. A bare perusal of the provisions of section 14 indicates that unless a notification is issued by the Central Government under section 14(2), the Tribunal constituted under the Administrative Tribunals Act does not have jurisdiction to decide the matters pertaining to employees of Corporations owned or controlled by the Central Government. There is no dispute that such a notification has not been issued by the Central Government. It is true, as submitted by Mr.Masand for Respondent Nos.1 to 50, this issue regarding jurisdiction was not raised by the Petitioners before the CAT. But this was obviously because they came into existence only on 1.10.2000, after the pleadings were complete. The impugned judgment has been passed in the absence of the Petitioners' advocate. Mr.Masand for

Respondent Nos.1 to 50 submits that since such a contention had not been raised by the Petitioners before the CAT they cannot be permitted to agitate the issue of jurisdiction for the first time before this Court. We are not inclined to accept this submission of Mr.Masand. Jurisdiction cannot be conferred upon a Court, much less a statutory Tribunal, by consent of parties. The Petitioners have raised these contentions regarding jurisdiction in the present Petition.It was necessary for the Tribunal to take judicial notice of the fact that BSNL which is a company owned completely by the Central Government did not fall within the purview of the Act. In fact the Tribunal had rejected several applications filed by various employees of BSNL since it had no jurisdiction. The Tribunal therefore, ought to have taken note of these judgements. In the case of *Bharat Sanchar Nigam Limited v/s. A.R. Patil* reported in **2003(1) SLR 386**, a Division Bench of this Court while deciding the Petition has held thus:

> 12. There is yet another aspect which has to be looked into and that is taking judicial notice of Government decisions known to have been taken and acknowledged by authorities judicial and quasi judicial decisions to convert the department of Telecommunications into BSNL was made publicly. It was known to one and all. Existence of BSNL is a fact of which judicial notice can be taken and has been taken by the Central Administrative Tribunal in its Calcutta Bench as also its Bombay Bench while dealing with two different cases. Once its therefore recognized and acknowledge by the Tribunal itself that BSNL is a legal entity it has become

> into existence. The Tribunal should have resisted exercise of jurisdiction. It should have avoided unwarranted exercise of jurisdiction in transfer matters.
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> 13. The Tribunal has ignored to take judicial notice of certain facts viz., Applicants atleast in three Original Applications that the employees are on deputation of BSNL. It has failed to take into consideration its own order by which existence of BSNL was recognised by it and once existence of BSNL is recognised employee thereof are deemed to be employees of BSNL. The Tribunal could not be laying overemphasis on the lack of certain statements by the counsel for the Union of India or BSNL assume jurisdiction to itself. In the result therefore on this ground the Petitions succeed and are allowed. Impugned order of the Tribunal dated 19.2.2002 is set aside in each of the Original Application. Each of the Original Application is dismissed as not maintainable. Each of Original Application is liable to be returned to the Applicant for appropriate action in view of the fact that the Tribunal has no jurisdiction to entertain the application.

13. Clearly, Respondent Nos.1 to 50 were aware in 2001 when the Tribunal passed the impugned order that BSNL was incorporated and that the employees of DOT stood transferred to BSNL. It was therefore, necessary for the respondents in all fairness to make BSNL a party to the proceedings before the Tribunal. Not having done so, Respondent Nos.1 to 50 cannot be heard to contend that the CAT had jurisdiction to decide the issue.

14. Mr.Masand has attempted to distinguish the facts in A.R.Patil’s case (supra) by submitting that the original application in that case was filed after the BSNL came into existence; whereas the original

application in the present case was pending before the CAT when BSNL was incorporated. In our opinion, even in respect of pending cases, the CAT would have no jurisdiction and the application would have to be dismissed on that ground. In the case of *United Bank of India v/s. Abhijit Tea Co. Pvt. Ltd.*, **2000(7) SCC 357,** the Apex Court had occasion to consider the provisions of the Recovery of Debts due to Banks, Financial Institutions Act, 1993. While considering the question whether civil suits which were pending when the DRT Act was brought on to the statute book should be transferred to the Debt Recovery Tribunal, the Apex Court has observed thus:

> 20. Now, it is well settled that it is the duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. (See G.P. Singh: Interpretation of Statutes, 7th Edn., p.406) If, while a suit is pending,a law like the 1993 Act that the civil court shall not decide the suit, is passed, the civil court is bound to take judicial notice of the statute and hold that the suit - even after its remand - cannot be disposed of by it.
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> 21. In some statutes the legislature no doubt says that no suit shall be "entertained" or "instituted" in regard to a particular subject-matter. It has been held by this Court that such a law will not affect pending actions and the law is only prospective. But, the position is different if the law states that after its commencement, no suit shall be "disposed of' or "no decree shall be passed" or "no court shall exercise powers or jurisdiction". In this class of cases, the Act applies even to pending proceedings and has to be taken judicial notice of by the civil courts.

15. In the case of *Union of India v/s. Delhi High Court Bar Association,* **(2002) 4 SCC 275**, the Apex Court has reiterated this view. The reliance placed by Mrs.Masurkar on the judgment of the Delhi High Court in the case of *Ram Gopal Verma* v/s. *Union of India*, **2001 Lab.I.C. 3781** is apt. The Delhi High Court considered the jurisdiction of the CAT to decide matters relating to Mahanagar Telephone Nigam Limited in the absence of any notification being issued under Section 14(2) extending the jurisdiction of the CAT to MTNL. The Court held that although the employee had a lien on his post in DOT, it was of no avail as he had challenged his suspension from a post in MTNL. The service status enjoyed by him in DOT would not confer jurisdiction on the Tribunal without the requisite notification under Section 14(2).

16. A statutory tribunal such as the CAT is a creature of the statute under which it is established. The jurisdiction with which it is vested is spelled out in the statute. The CAT is vested with the jurisdiction to decide matters relating to wholly owned government companies only if a notification has been issued under section 14(2) of the Administrative Tribunals Act. There being no such notification in respect of BSNL, the CAT had no jurisdiction to decide the application on 5.11.2001, despite the fact that the application was

filed in 1997 when BSNL was not in existence. There is no provision in the act to save such cases which may have been filed by employees of a department of the Government prior to its corporatisation. In our opinion, therefore, the impugned judgment is required to be set aside on this ground alone.

17. Even on merits, we are of opinion that Respondent Nos.1 to 50 have not made out a case and the order of the CAT cannot be sustained in certain respects. The impugned order directs that the promotions to BCR grade IV should be made on the basis of basic grade seniority. The Petitioners have no quarrel with this part of the order as they have been implementing this procedure ever since the Apex Court confirmed the judgement of the Principal bench of the CAT in *Santosh Kapoor'*s case. However, the Petitioners have impugned that part of the order of the Tribunal which directs them to consider the claim of Respondent Nos.1 to 50 as per rules on the basis of their basic grade seniority. Those found fit for promotion are directed to be given such promotion, notionally, with retrospective effect from the time their immediate juniors were given promotion to grade IV. Mrs.Masurkar for the Petitioners submits that this is contrary to the judgment given by the coordinate bench that is the principal bench of the CAT in Santosh Kapoor's case

which had been confirmed by the Supreme Court. She submits, and in our opinion, rightly, that the Bombay bench ought to have followed the judgement in *Santosh Kapoor*'s case as co-ordinate benches are expected to do so. She relies on the judgment of the Supreme Court in *S.I.Rooplal and another* v/s. *Lt.Governor through Chief Secretary, Delhi and others*, **AIR 2000 SC 594**, where the Court has expressed its dissatisfaction with regard to co-ordinate benches of the Tribunal not following earlier decisions of a bench. As stated earlier, only those persons who were regular employees on 1.1.1990 and who had completed 26 years of service in the basic grade were entitled to promotion to the 10% posts in the scale of 2000-3200 being BCR grade IV. There is again no dispute that these persons i.e., Respondent Nos.1 to 50 did not fulfil the requisite qualifications and stipulations for being promoted to Grade IV of the BCR scheme when Respondent Nos.51 to 54 were promoted. This is because none of them had completed 26 years in the service in the basic grade. Thus, Respondent Nos.1 to 50 cannot have a grievance about the fact that they were not promoted to grade IV of Rs.2000-3200 in the 10% posts under the BCR scheme without fulfilling the precondition of having completed 26 years in service in the basic grade.

18. The Respondents' grievance appears to be that

they ought to have been granted the promotion to Grade IV before Respondent Nos.51 to 54 and, therefore, have sought a direction from CAT for setting aside the order dated 4.10.1996 and 1.3.1996 promoting Respondent Nos.51 to 54. Mr.Masand for Respondent Nos.1 to 50 submits that they are entitled to be considered before Respondent Nos.51 to 54 as this was only a case of upgradation of non-functional posts and there can be no reservation in respect of such posts. We need not enter into this controversy as in any event Respondent Nos.1 to 50 have not completed the requisite preconditions for being considered eligible for appointment to grade IV of the BCR scheme.

19. Respondents 51 to 54 had been granted promotions earlier on the basis of their having completed 17 years of service as required under communication dated 10.2.1992 received from the DOT. Therefore, there is no doubt that the grievance of the respondents is unsustainable. Furthermore, the communication dated 16.5.1991 issued by the DOT stipulates that the promotion under the BCR scheme being functional, the rules for reservation are also applicable in cases of such promotion. However, in the present case, although Respondents Nos.51 to 54 had been granted promotions to grade IV of BCR scheme earlier, on 26.11.1998 they were placed in supernumerary posts. In fact after

10.12.1999, they were reverted to BCR III with pay protection. In any event, Respondents 1 to 50 can have no grievance against the other respondents. Therefore, even on merits, Respondent Nos.1 to 50 have not been able to make out any case and the CAT was certainly in error in directing the Petitioners to consider the claims of Respondents 1 to 50 and to give them retrospective notional promotions from the date their immediate juniors were given promotion to grade IV. Apart from this, there is nothing on record to show that respondent Nos.1 to 50 were the seniormost in that cadre and therefore, deserved promotion to grade IV. In all probability, there are others who had completed 26 years of service and were regular employees as on 1.1.1990, prior to Respondents 1 to 50. In this view of the matter, Respondent Nos.1 to 50 would not be entitled to posts as claimed by them.

20. The judgment of the CAT is quashed and set aside. However, the conclusion that promotion to BCR grade IV should be on the basis of the basic grade seniority is retained.

21. Rule made absolute accordingly. No order as to

costs.

(H.L. Gokhale, J.)

(Nishita Mhatre, J.)